

Filed

JAN 27 2015

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JERRY SMITH,

Plaintiff,

v.

JERRY WHITE, et. al.,

Defendants.

No. C 14-04648 EJD (PR)

ORDER OF DISMISSAL WITH LEAVE
TO AMEND

Plaintiff, a state prisoner at San Quentin State Prison, filed the instant civil rights action in pro se pursuant to 42 U.S.C. § 1983. Plaintiff's motion for leave to proceed in forma pauperis will be granted in a separate written order.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is

1 immune from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must, however, be
2 liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
3 1988).

4 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
5 elements: (1) that a right secured by the Constitution or laws of the United States was
6 violated, and (2) that the alleged violation was committed by a person acting under the
7 color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

8 **B. Plaintiff's Claims**

9 Plaintiff claims that on February 28, 2014, Defendant Jerry White returned his
10 confidential legal mail to him unprocessed. (Compl. at 3.) Plaintiff claims that he
11 informed mailroom supervisor Alex Lile, but that his mail continues to be unprocessed.
12 (Id.)

13 Prisoners have a constitutional right of access to the courts. See Lewis v. Casey,
14 518 U.S. 343, 350 (1996); Bounds v. Smith, 430 U.S. 817, 821 (1977). To establish a
15 claim for any violation of the right of access to the courts, the prisoner must prove that
16 there was an inadequacy in the prison's legal access program that caused him an actual
17 injury. See Lewis, 518 U.S. at 350-55. To prove an actual injury, the prisoner must show
18 that the inadequacy in the prison's program hindered his efforts to pursue a non-frivolous
19 claim concerning his conviction or conditions of confinement. See id. at 354-55.

20 Plaintiff's allegations are insufficient to state a claim of a denial of access to courts
21 because he has failed to allege an actual injury. The complaint is DISMISSED WITH
22 LEAVE TO AMEND for Plaintiff to attempt to show that: (1) the prisoner's legal access
23 program is inadequate; and (2) the program hindered his efforts to pursue a non-frivolous
24 claim concerning his conviction or conditions of confinement. See Lewis, 518 U.S. at
25 354-55. With respect to the latter, Plaintiff should include the case number, the court
26 where the matter is being adjudicated, and the description of the claim.

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28 ///

CONCLUSION

For the foregoing reasons, the Court orders as follows:

1. The complaint is DISMISSED with leave to amend. Within **twenty-eight (28) days** of the date this order is filed, Plaintiff shall file an amended complaint using the court's form complaint. The amended complaint must include the caption and civil case number used in this order, i.e., Case No. C 14-04648 EJD (PR), and the words "AMENDED COMPLAINT" on the first page. Plaintiff must answer all the questions on the form in order for the action to proceed.

Failure to respond in accordance with this order by filing an amended complaint will result in the dismissal of this action without prejudice and without further notice to Plaintiff.

The Clerk shall include two copies of the court's complaint with a copy of this order to Plaintiff.

DATED: _____

1/20/15



EDWARD J. DAVILA
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JERRY SMITH,
Plaintiff,

Case Number: CV14-04648 EJD

CERTIFICATE OF SERVICE

v.

JERRY WHITE, et al.,
Defendants.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 1/27/15, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Jerry Smith H44485
San Quentin State Prison
San Quentin, CA 94974

Dated: 1/27/15

Richard W. Wieking, Clerk
By: Elizabeth Garcia, Deputy Clerk